IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY THIRD DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

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WRIT PETITION Nos : 7958, 7974, 8706 of 1999

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WRIT PETITION Nos : 7958 of 1999

Between:

M/s. Vijaya Ganesh Stone Industry, Rep. by its Proprietor, V.R.Venkateswara Reddy, S/o V.R.Rami Reddy, R/o.Kanakadripalli, Kolimigundla Mandal, Kurnool District.

..... PETITIONER

AND

1. Andhra Pradesh State Electricity Board, rep. by its Secretary, Vidyut Soudha, Hyderabad.
2. The Chief Engineer (Operations), Andhra Pradesh State Electricity Board, Cuddapah, Cuddapah District.
3. The Superintending Engineer (Operations), Andhra Pradesh State Electricity Board, Cuddapah, Cuddapah District.
4. The Assistant Divisional Engineer (Operations), Andhra Pradesh State Electricity Board, Banaganapalli, Kurnool District.

....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ of certiorari by calling for records pertaining to the order passed by the 3rd respondent herein in his Proceeding No.SE/A/CDP/FAO/D.NDL/PF.20/97-98/D.No.94/98, dated 22.05.1998, as confirmed by the order passed by the 2nd respondent herein, in Appeal No.A 108-98-KLN, dated 31.12.1998 and quash the

same.

WRIT PETITION NO : 7974 of 1999

Between:

M/s.Vigneswara Polishing Stone Industry, Rep.by its Proprietor,

V.R.Rami Reddy, S/o.Venkata Subba Reddy, Kanakadripalli, Kolimigundla Mandal, Kurnool District.

..... PETITIONER

AND

1. Andhra Pradesh State Electricity Board, rep. by its Secretary, Vidyut Soudha, Hyderabad.
2. The Chief Engineer (Operations), Andhra Pradesh State Electricity Board, Cuddapah, Cuddapah District.
3. The Superintending Engineer (Operations), Andhra Pradesh State Electricity Board, Cuddapah, Cuddapah District.
4. The Assistant Divisional Engineer (Operations), Andhra Pradesh State Electricity Board, Banaganapalli, Kurnool District.

....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ of certiorari by calling for records pertaining to the order passed by the 3rd respondent herein in his Proceeding No.SE/A/CDP/FAO/D.NDL/PF.18/97-98/D.NO.787/98, dated 23.07.1998, as confirmed by the order passed by the 2nd respondent herein, in Appeal No.A 109-98-KLN/D.No.6665/98, dated 31.12.1998, and quash the same.

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WRIT PETITION NO : 8706 of 1999

Between:

S.Pedda Siva Reddy, S/o.Anki Reddy, Proprietor, Slab Polishing Industry (SC.No.58), Raghavarajupalli, Kolimigundla Mandal, Kurnool District.

..... PETITIONER

AND

1. Andhra Pradesh State Electricity Board, rep. by its Secretary, Vidyut Soudha, Hyderabad.

2. The Chief Engineer (Operations), Andhra Pradesh State Electricity Board, Cuddapah, Cuddapah District.

3. The Superintending Engineer (Operations), Andhra Pradesh State Electricity Board, Cuddapah, Cuddapah District.

4. The Assistant Divisional Engineer (Operations), Andhra Pradesh State Electricity Board, Banaganapalli, Kurnool District.

....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ of certiorari by calling for records pertaining to the order passed by the 3rd respondent herein in his Proceeding No.SE/A/CDP/FAO/D.NDL/F.50/98/D.No.671/98, dated 30.12.1998, as confirmed by the order passed by the 2nd respondent herein, in Appeal No.A 121-99-KNL, dated 27.02.1999 and quash the same.

Counsel for the Petitioner (in all the writ petitions): MR.T.NIRANJAN REDDY

Counsel for the Respondents (in all the writ petitions): SMT.M.VINOBHA DEVI

The Court made the following:

COMMON ORDER:

Since common question is involved in all these writ petitions, all are heard together and disposed of by this common order.

Heard the learned counsel for the petitioners, Sri T.Niranjan Reddy, and the learned Standing Counsel for the respondent Corporation, Smt.M.Vinobha Devi.

The petitioners, in all these writ petitions, who are running the Stone Industries, which manufacture slates, seek to assail the impugned orders of assessment in regard to certain irregularities found against them during the inspection conducted in their premises, in the first and second writ petitions on 14.11.1997 and in the third writ petition on 18.08.1998. A show cause notice was issued followed by

provisional assessment and final assessment. On appeal also, the same was confirmed. Hence, these writ petitions.

The learned counsel for the petitioners submits that no doubt having regard to the finding of fact arrived at in regard to the irregularities, the assessment made is quite on higher side. In regard to the number of working hours also, as the petitioners' industries are only manufacturing slates, they would hardly work 6 hours per day; whereas the respondent authorities have taken it as 10 hours per day for assessment. Further, it is also pointed out that in regard to similar such industries, the respondent authorities have taken the working hours as 6 hours per day and not 10 hours per day. In view of the same, the very approach of the respondent authorities is quite illegal.

The learned Standing Counsel for the respondent Corporation sought to repel the aforesaid contentions on the ground that in view of the concurrent findings by both the authorities, the same cannot be interfered with.

Having considered the submissions made on either side and also on perusal of the material, the only question that falls for consideration is as to whether the assessment in all these writ petitions is arbitrary?

There is no dispute to the fact that the petitioners are running the industries, which manufacture slates and in the inspection conducted in their premises, certain irregularities were found. In view of the finding of fact arrived at by both the authorities, the same cannot be gone into in these writ petitions filed under Article 226 of the Constitution of India. However, the specific plea raised by the petitioners in regard to the working hours in respect of similar industries at 6 hours per day, the same has not been denied by filing any counter by the respondents herein. There is also no denial of the fact that in similar industries, the respondent authorities have assessed the loss sustained by the Board on the basis of 6 hours per day. In view of the same, it has to be taken that the working hours of the petitioners' industries also at 6 hours per day and not any period beyond the same.

In the circumstances, taking into consideration this aspect, the amount arrived at certainly runs quite on higher side and beyond the business hours. In view of the same, the writ petitions are allowed in part reducing the assessment made by 40% in all the writ petitions. No costs.

Accordingly, in W.P.No.7958 of 1999, the assessment amount is reduced from Rs.1,53,666/- to Rs.92,199.60 ps; in W.P.No.7974 of 1999, the assessment amount is reduced from Rs.2,05,677/- to Rs.1,23,406.20 ps and in W.P.No.8706 of 1999, the assessment amount is reduced from Rs.3,10,833/- to Rs.1,86,499.80 ps.

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23.12.2004

VGB

That Rule nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Thursday, The Twenty Third Day of December, Two Thousand and Four.

To

1. The Secretary, Andhra Pradesh State Electricity Board, Vidyut Soudha, Hyderabad.
2. The Chief Engineer (Operations), Andhra Pradesh State Electricity Board, Cuddapah, Cuddapah District.
3. The superintending Engineer (Operations), Andhra Pradesh State Electricity Board, Cuddapah, Cuddapah District.
4. The Assistant Divisional Engineer (Operations), Andhra Pradesh State Electricity Board, Banaganapalli, Kurnool District.
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